

IN-CONFIDENCE

Parliamentary Commission of Inquiry
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FILE No.

C. 33

ARCHIVAL ACTION

FORMER PAPERS

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TITLE

ALLEGATION NO 20.

Related Papers

[illegible]

FILE NO.

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ALLEGATION NO 20

Particulars of Allegation

The Honourable Lionel Keith Murphy, on or about the thirty-first day of March 1979, and whilst a Justice of the High Court of Australia, did urge or encourage Morgan Ryan to cause harm to David Rofe, one of Her Majesty's Counsel.

Further, the Judge, on or about the seventh day of February 1980, and whilst a Justice of the High Court of Australia, again urged or encouraged Ryan to cause harm to Rofe.

From 1975 to 1979 Rofe had acted and appeared as Counsel for the informant in private prosecutions brought by Danny Sankey against the Judge and others upon a charge of conspiracy to effect a purpose that was unlawful under a law of the Commonwealth, and a charge of conspiracy at common law.

The Judge's purpose in urging or encouraging Ryan to cause harm to Rofe was to take revenge upon Rofe for what he had done in the conduct of these prosecutions.

It will be contended that this conduct by the Judge amounted to misbehaviour within the meaning of Section 72 of the Constitution in the following respects: -

- a) urging or encouraging another to take revenge upon a person for what that person had done in the discharge of his duty in the administration of justice;

further, or in the alternative

- b) urging or encouraging a person unlawfully to cause harm to another.

As such it constituted conduct contrary to accepted standards of judicial behaviour.

Extract from Weinberg/Phelan Memorandum
dated 3 July 1986 (full copy on File C51

ALLEGATION NO. 20 - THE ROFE MATTER

Statement of Offence

Contempt of Court

Particulars of Offence

On or about the 31st March 1979, the Judge attempted to take or threaten revenge upon David Rofe QC, a person who had conducted a private prosecution against the Judge on behalf of one Danny Sankey, for what Rofe had done in the discharge of his duty, in the administration of justice, with intent to punish Rofe QC for his conduct. It is further alleged that on the 7th February 1980 the Judge again attempted to arrange for Rofe QC to be punished for his conduct of the prosecution against the Judge.

Witnesses to be Interviewed

1. David Rofe QC
2. Morgan Ryan
3. Mr. Bilinsky - Solicitor
4. the police officers who can authenticate the passages in The Age tapes dealing with these two conversations. See also the one tape recording of the Judge's voice that we actually have in our possession to determine whether there is a relevant reference to Rofe in that conversation. See also the Judge's explanation of his comments on the Rofe matter in answer to questions put by The Attorney General in February 1984 - see the aide memoire dealing with this.

Ryan: Yeah. Yeah.
 Murphy: And, er, that Rofe visits there regularly.
 Ryan: Oh, that's interesting...
 Murphy: Last night I was down at a bar function and er (very low) he was down there that Rofe and, er, straight after that function he was headed for the bar.
 Ryan: Hmm. Hmm.
 Murphy: Does he drive himself?
 Ryan: I don't know. But look, we can do something now because I'm back here now and I'm going to have that... I'm going to have dinner one night. Okay?
 Murphy: Now is your fellow the one...I talked to him and he is appointing that fellow to be the Deputy Chairman.
 Ryan: Mmmm.
 Murphy: No, not down there...Neville is appointing Jegerow.
 Ryan: Oh is he? Oh, that's good. He's getting the appointment?
 Murphy: Yeah.
 Ryan: Good, you're sure of that? 'Cause I was gonna ring him on Monday morning.
 Murphy: He told me.
 Ryan: Okay. Righto...
 Murphy: He'll give it to him. But I think your fellow might have been wanting to make it some long tenure or something. Don't know what it is. He said he wasn't doing that... making...
 Ryan: Righto.
 Murphy: How is this bloke, that is replacing Murray? Is he the right fellow?
 Ryan: Yes. You're going to dine with him.
 Murphy: He's a good fellow is he?
 Ryan: You're going to find for yourself. We'd better not talk about it now, had we?
 Murphy: No. Righto.
 Ryan: It'll be well and truly satisfactory, I'd say.
 Murphy: Are you going up to the...
 Ryan: I'm not going anywhere. I'm just going to bed.
 Murphy: Okay, alright. Okay.

Ryan to Jegerow.

Jegerow: Hello.

Ryan: Oh Bill, it's Morgan Ryan.

Jegerow: Oh Morgan, God bless you and love you. How are you?

Ryan: Good. Now I only got back this morning.

Jegerow: Yup.

Ryan: And the trump rang me. I had a short conversation. You're getting that appointment. But you won't be getting it for... Don't be pushing this ten year business or whatever it is.

Ryan to Male at Gary Boyd's phone number.

Ryan: I just thought I'd ring you back and tell you. It's a funny thing. I set about to accomplish all these things that we don't... But it might be of some benefit... I just got a ring to tell me...just before I left for overseas I got in touch with N, you see, the trump. I said to him, you owe us one favour. You're always fuckin' howling about this fellow, but I said, but please appoint him to this fuckin' job and get him off my back, that big Jegerow... I just got the phonecall a minute ago. It was from his...er, you know, the other trump. And he said, By the way, he said, er, Nif' said to tell you that he's given that big bastard the appointment...

Ryan: Oh I don't. He's a... He gets all these ideas about himself - terribly egotistical. But he's got no fucking idea.

Murphy: How old is he?

Ryan: 43 or so.

Murphy: I thought he'd be a bit more than that.

Ryan: Alright then. Well, what's our next move? (overtalking)

Murphy:... yeah but... (laughs) There's only one way to do it but...

Ryan: That's right.

Murphy: That's what, um, just leave Garfield to die... (laughs) ... in the brothel.

Ryan: Yeah.

Murphy: Otherwise he could. Now the thing is he's talking about something being buffered, but not down, what's important enough, tell me, they do (inaudible) with that Ellicott bloke. What would be possible - we must do it, even if he (inaudible) to issue a writ against Rofe and Ellicott and not worry about (inaudible). The other people are the real villains, (inaudible). There's plenty on Rofe and (inaudible) could get plenty on Ellicott. (Inaudible) even my own colleagues shot me down on it, but Ellicott was behind it. Right? And in the department they all know that. Now they could be served interrogatories to show the bloody collusion between them in everything. But more than anything else, you see what it would do, do you?

Ryan: Mmm. (pause) No. I'm not quite with you because I'm not quite... I'm half crook this morning.

Murphy: Well you see this fellow took the (inaudible). Ellicott really masterminded the whole thing. (Inaudible). And he kept on going at the finish in order to try and damage me. That was his main thing. Apparently he was carrying on to the Cabinet, but he was willing to drop it against them, apparently. Except me. (Inaudible) was telling me a bit at one stage and it was bloody right.

Ryan: Listen, when can I, you've just caught me getting into the shower, because I've got to get in. When can I talk to you? What's our next move?

Murphy: Well, I reckon I'd be... How are you getting on with McHugh?

Ryan: Oh alright. Heavens, I'm getting on well with him.

Murphy: Well, why don't you... How does he take these things?

Ryan: Well he's got a stack of work, that's the only thing. He's likely to tell you he's got too much work.

Murphy: But he'd like this case, surely.

Ryan: Probably. Let me get back in touch with you. A writ against Rofe, Ellicott and Sankey. OK.

Murphy: Or Sankey, Ellicott and Rofe. Now there's plenty to rope Rofe in. There is the conversation with Chamberlain in which he told (inaudible) are all about. And there was the carrying on when there was obviously no case. Against Sankey it's very strong. He kept saying all he wanted was to get at the bloody facts of the thing. That's no basis for commencing a criminal prosecution. They acted on behalf of a bloody client whose motivation was simply to bring out the facts about a political affair. That was Rofe. A most improper bloody basis. Alright?

Ryan: Alright.

Murphy: Are you completely...

Ryan: I'm not... I'm crook this morning. Okay.

Murphy: You're doing too much of all that bloody running.

Ryan: No. Doing too much fucking, if you must know.

Murphy: (Inaudible) not made for all that running around.

Ryan: Aww, I'm not doing any. Okay?

Murphy: Okay....